Supreme Court, U.S.
FILED
02 - 21 JUN 2 8 2002
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

SEAFREEZE ALASKA, L.P.,

Petitioner,

v.

JOE HARPER, and the class of similarly situated persons; ALEX MORROW, and the class of similarly situated persons; JASON MCBRIDE, and the class of similarly situated persons,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

MICHAEL F. STURLEY
Counsel of Record
727 East Dean Keeton Street
Austin, Texas 78705-3299
(512) 232-1350
(512) 471-6988 (fax)

ANTHONY J. GASPICH
GASPICH & WILLIAMS PLLC
1809 Seventh Avenue, Suite 609
Seattle, Washington 98101-1393
(206) 956-4204
(206) 956-4214 (fax)

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

45pgs

QUESTION PRESENTED

A federal statute requires "the master or individual in charge of a fishing vessel" to "make a fishing agreement in writing with each seaman e[m]ployed on board." 46 U.S.C. § 10601. Is this statutory requirement satisfied by a fully binding written contract that has been signed by the employee and his vessel-owning employer but not by the master of the vessel?

LIST OF PARTIES AND RULE 29.6 DISCLOSURE STATEMENT

All parties to the proceeding in the court of appeals appear in the caption of the case. Petitioner was formerly known as United States Seafoods, L.P. It changed its name to Seafreeze Alaska, L.P., as of January 2001. The Application for an Extension of Time in this case, No. 01A907, was filed under petitioner's former name.

The complaint named the vessel F/T Seafreeze Alaska, *in rem*, as an additional defendant. The vessel is accordingly named in the captions in both lower courts. The vessel was never arrested, however, and thus it was never a party to the action in either the district court or the court of appeals. The list of counsel appearing in the court of appeals' opinion is erroneous to the extent that it suggests (at App. 2a) that the vessel participated in the action below.

Petitioner is a Limited Partnership under the laws of the State of Alaska. No publicly held company has any interest in the partnership.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

LIST OF PARTIES AND RULE 29.6 DISCLOSURE STATEMENT ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

STATUTE INVOLVED 2

STATEMENT 2

REASONS FOR GRANTING THE PETITION 5

I. THE NINTH CIRCUIT HAS FUNDAMENTALLY MISUNDERSTOOD THE IMPLICATIONS OF REQUIRING THE MASTER TO SIGN A FISHING AGREEMENT 6

A. The Master's Signature Is Not Required to Bind the Contracting Parties to a Fishing Agreement 7

B. The Master's Signature Is Not Required to Accomplish the Statutory Purposes of § 10601 8

C. The Ninth Circuit Has Exalted Form Over Substance 11

II. THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THE SIXTH CIRCUIT'S STANDARD GOVERNING THE STATUTORY REQUIREMENTS FOR SEAMEN'S EMPLOYMENT CONTRACTS 13

TABLE OF CONTENTS – Continued

Page

III. THE DECISION BELOW CREATES SERIOUS PROBLEMS FOR THE FISHING INDUSTRY ... 17

A. The Decision Below Invites Wasteful Litigation Burdening Both the Courts and the Fishing Industry ... 17

B. The Decision Below Imposes a Potentially Ruinous Burden on the Fishing Industry .. 18

IV. THE DECISION BELOW CLEANLY RAISES AN IMPORTANT ISSUE THAT THIS COURT SHOULD RESOLVE ... 21

CONCLUSION ... 23

APPENDIX A: COURT OF APPEALS' OPINION 1a

APPENDIX B: DISTRICT COURT'S ORDER 1b

APPENDIX C: COURT OF APPEALS' ORDER DENYING PETITION FOR REHEARING ... 1c

APPENDIX D: EMPLOYMENT CONTRACT 1d

TABLE OF AUTHORITIES

Page

CASES:

Bishop v. United States, 476 F.2d 977 (CA5 1973) 8

Bjornsson v. U.S. Dominator, Inc., 863 P.2d 235 (Alaska 1993) 7, 9

Botker v. Towner, 3 E.D. Smith 132 (N.Y. C.P. 1854) ..6, 11

Crowell v. United States, 6 F. Cas. 912 (C.C. D. Mass. 1856) (No. 3447) 7

Deal v. A.P. Bell Fish Co., 674 F.2d 438 (CA5 1982) 8

Eastman Kodak Co. v. Image Technical Services, Inc., 504 U.S. 451 (1992) 21

Farrel v. M'Clea, 1 U.S. (1 Dall.) 392 (Pa. C.P. 1788) 10

Glynn v. Roy Al Boat Management Corp., 57 F.3d 1495 (CA9 1995) 8

Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982) 16

Landino v. F/V Shirley R., No. C02-377C (W.D. Wash., filed Feb. 14, 2002) 18

Seattle-First National Bank v. Conaway, 98 F.3d 1195 (CA9 1996) 9

Stewart v. Golden Age Fisheries, No. C91-1120Z (W.D. Wash., Jan. 10, 1995) 6

Sylvis v. Rouge Steel Co., 873 F.2d 122 (CA6 1989) ...*passim*

TCW Special Credits v. Chloe Z Fishing Co., 129 F.3d 1330 (CA9 1997) 9

TABLE OF AUTHORITIES – Continued

Page

Thyssen Steel Co. v. M/V Kavo Yerakas, 50 F.3d 1349 (CA5 1995) 12

United States v. W.M. Webb, Inc., 397 U.S. 179 (1970) 7

Wheatley v. Gladden, 660 F.2d 1024 (CA4 1981) 8

STATUTES:

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1333(1) 1

46 U.S.C. § 531 (1982) 13

46 U.S.C. § 564 (1982) 13

46 U.S.C. § 574 (1982) 13

46 U.S.C. § 596 (1982) 16

46 U.S.C. § 10302 13

46 U.S.C. § 10313(g) 16

46 U.S.C. § 10502 13

46 U.S.C. § 10502(a) (1988) 14

46 U.S.C. § 10504(c) 16

46 U.S.C. § 10508(a) 14

46 U.S.C. § 10601 ..... *passim*

46 U.S.C. § 10601(a) 2, 14

46 U.S.C. § 10601(b) 2, 3, 4

46 U.S.C. § 10601(c)(1) 2, 3

TABLE OF AUTHORITIES – Continued

Page

46 U.S.C. § 10601(c)(2) 2, 3

46 U.S.C. § 10601(c)(3) 2, 3

46 U.S.C. § 11107 4

46 U.S.C. § 14104 2

46 U.S.C. § 14302 2

46 U.S.C. § 14502 2

Jones Act, 46 U.S.C. app. § 688 8

OTHER AUTHORITIES:

PETER B. DOERINGER & DAVID G. TERKLA, TROUBLED WATERS: ECONOMIC STRUCTURE, REGULATORY REFORM, AND FISHERIES TRADE (1995) 20

1 European Commission, Green Paper: The Future of the Common Fisheries Policy 16-17 (2001) 20

GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY (2d ed. 1975) 10

SEBASTIAN JUNGER, THE PERFECT STORM (1997) 19

LANE C. KENDALL & JAMES J. BUCKLEY, THE BUSINESS OF SHIPPING (7th ed. 2001) 21

National Marine Fisheries Service, Fisheries of the United States 2000 (August 2001) 20

MARTIN J. NORRIS, THE LAW OF SEAMEN (4th ed. 1985) 10

TABLE OF AUTHORITIES – Continued

Page

Oversight Hearing on Individual Fishing Quotas (IFQs) Before the Subcomm. on Fisheries, Conservation, Wildlife and Oceans of the House Comm. on Resources, 107th Cong., 2d Sess. (Feb. 13, 2002) 19

Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: Oversight Hearing Before the Subcomm. on Fisheries, Conservation, Wildlife and Oceans of the House Comm. on Resources, 107th Cong., 1st Sess. (2001) (Serial No. 107-26)..... 19

OPINIONS BELOW

The opinion of the court of appeals is reported as *Harper v. United States Seafoods, L.P.*, 278 F.3d 971, 2002 AMC 650 (CA9 2002). It is reprinted as Appendix A ("App. A"), *infra*, at page 1a.

The district court's Order on Plaintiff's Motion for Partial Summary Judgment has been reported only at 2002 AMC 77 (W.D. Wash. 2001). It is reprinted as Appendix B ("App. B"), *infra*, at page 1b.

The court of appeals' order denying petitioner's petition for rehearing has not been reported. It is reprinted as Appendix C ("App. C"), *infra*, at page 1c.

JURISDICTION

Petitioner seeks review of the judgment of the United States Court of Appeals for the Ninth Circuit, which was dated and entered on January 29, 2002. *See* App. A. On March 20, 2002, the Ninth Circuit denied a timely petition for rehearing. *See* App. C. On May 21, 2002, Justice O'Connor extended the time for filing a petition for certiorari to and including June 28, 2002. Application No. 01A907. This petition was filed on that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The district court had jurisdiction under 28 U.S.C. § 1333(1).

STATUTE INVOLVED

46 U.S.C. § 10601 provides as follows:

> (a) Before proceeding on a voyage, the master or individual in charge of a fishing vessel, fish processing vessel, or fish tender vessel shall make a fishing agreement in writing with each seaman e[m]ployed on board if the vessel is –
>
> (1) at least 20 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; and
>
> (2) on a voyage from a port in the United States.
>
> (b) The agreement shall be signed also by the owner of the vessel.
>
> (c) The agreement shall –
>
> (1) state the period of effectiveness of the agreement;
>
> (2) include the terms of any wage, share, or other compensation arrangement peculiar to the fishery in which the vessel will be engaged during the period of the agreement; and
>
> (3) include other agreed terms.

STATEMENT

The relevant facts are completely straightforward and undisputed. Petitioner owns and operates the F/T

Seafreeze Alaska, a vessel that fishes in and around the Bering Sea. In January 2000, it hired respondent Joe Harper to serve as a processor on board the vessel.

Following petitioner's normal practice, Tracy Veness, the company's recruiting and hiring coordinator, hired Mr. Harper at petitioner's Seattle office. The detailed employment contract comprised twenty-six numbered paragraphs, each covering a specific topic. (The contract is reprinted as Appendix D, *infra*, at page 1d.) Paragraph 2 and the signature page "state the period of effectiveness of the agreement," as required by 46 U.S.C. § 10601(c)(1). *See* App. 1d-2d, 11d. Paragraph 3 and the signature page define Mr. Harper's share of the "crewshare pool" (the portion of the voyage proceeds that is distributed among the crew) and specify his guaranteed gross earnings, thus fully complying with 46 U.S.C. § 10601(c)(2). *See* App. 2d, 11d. The remainder of the contract "include[s] other agreed terms," as contemplated by 46 U.S.C. § 10601(c)(3). *See* App. 1d-13d.

As part of the normal hiring procedure, Ms. Veness reviewed the contract with Mr. Harper. She read and explained all of the provisions to him, and he acknowledged his understanding and acceptance of each term by initialing each paragraph of the contract. He then signed the entire contract on the signature page. Ms. Veness, with petitioner's explicit authority to sign crew employment contracts, signed for the company (in the process complying with 46 U.S.C. § 10601(b)). As the district court noted, "[t]he parties agree that the contract between Mr. Harper and [petitioner] satisfied the requirements of 46 U.S.C. § 10601 in all respects but one." App. 4b. The

one objection was that the master of the vessel did not sign the contract.

Mr. Harper completed his contract, and petitioner paid him in full according to the contract terms. He filed the present action five months later, claiming that the contract was invalid under 46 U.S.C. § 10601 because it had been signed by the company's recruiting and hiring coordinator rather than by the vessel's master. On the basis of this alleged statutory violation, he claimed additional wages under 46 U.S.C. § 11107, calculated according to the highest rate of pay for seamen of similar rating in the port of hire.

Mr. Harper moved for partial summary judgment on the claim that his crew contract violated the requirements of 46 U.S.C. § 10601. The district court granted the motion, agreeing that § 10601 requires the master's signature. The court reasoned that the parties to the agreement are the master and the crew member. *See* App. 5b. Because § 10601(b) declares that "[t]he agreement shall be signed also by the owner of the vessel," the statute implies that the agreement will be signed by the parties themselves – including the master. *See* App. 4b-5b. The district court also believed that the statutory language requiring "the master [to] make a fishing agreement in writing with each seaman" imposed a signature requirement on the master because signing a contract is a necessary step in making a contract. *See* App. 6b-7b. Finally, the district court concluded that a master's signature requirement was consistent with Congress's purpose in protecting fishermen. *See* App. 8b-9b.

On appeal, the Ninth Circuit affirmed. In the court of appeals' view, "[t]he unambiguous text of 46 U.S.C. § 10601 . . . requires a master to sign the agreement." App. 5a. The court found support for this conclusion in cases arising under predecessors to § 10601 that refer to the master's having signed the contract. *See* App. 6a-7a. It also believed that the term "make" implied a signature requirement. *See* App. 8a-10a. As a matter of policy, the Ninth Circuit agreed with the district court that a signature requirement "effectuates the purpose of § 10601" in protecting fishermen. App. 10a. The unfairness of the result in this particular case, an inconsistent decision from the Sixth Circuit, and the potential increase in litigation were all insufficient to overcome what the court of appeals saw as the most straightforward interpretation of the statute. *See* App. 11a-13a. Finally, the court argued that the explicit master's signature requirements in related statutes governing other seamen did not suggest the absence of a similar signature requirement here. On the contrary, these statutes "elaborat[ed]" that the master is expected to sign a seaman's employment contract. *See* App. 13a-15a.

Petitioner sought rehearing en banc, which was summarily denied. *See* App. C.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit has radically reinterpreted 46 U.S.C. § 10601, apparently because it fundamentally misunderstood the implications of the new requirement that it announced. The decision below creates a rule that

serves no useful purpose but instead exalts form over substance. It directly conflicts with the standards applied by the Sixth Circuit in the same context, invites wasteful litigation, and imposes a potentially ruinous burden on the fishing industry. The present case offers an ideal vehicle for resolving the correct interpretation of this important statute.

I

THE NINTH CIRCUIT HAS FUNDAMENTALLY MISUNDERSTOOD THE IMPLICATIONS OF REQUIRING THE MASTER TO SIGN A FISHING AGREEMENT

"The unambiguous text of 46 U.S.C. § 10601" does not address whether the master must sign a fishing agreement. The text imposes no such requirement. Nor has prior caselaw imposed such a requirement. For over two centuries, § 10601 and various predecessor and related statutes have been part of federal law. Until now, no decision of which we are aware – and no decision that respondents or the courts below have cited – has held that a master must sign a fishing agreement, or has held that the master's duty "to make" a seaman's employment contract requires the master's signature.[1] The Ninth

---

[1] Several cases over the last century and a half have held to the contrary. *See, e.g., Stewart v. Golden Age Fisheries*, No. C91-1120Z (W.D. Wash., Jan. 10, 1995) (§ 10601 does not require the master to sign a fishing agreement); *Botker v. Towner*, 3 E.D. Smith 132, 134 (N.Y. C.P. 1854) (statute requiring the master to "make" an agreement does not require the master's signature). The strongest prior authority for respondents' position is found in dicta in cases in which the statute was clearly violated

Circuit's radical reinterpretation of § 10601, imposing this new burden on the industry, appears to have been based on some fundamental misconceptions about the implications of requiring the master to sign a fishing agreement.

A. The Master's Signature Is Not Required to Bind the Contracting Parties to a Fishing Agreement

The district court explicitly declared that "[t]he parties making the agreement are the master of the vessel and the seaman." App. 5b. The court of appeals seems to have operated on the same assumption. *See, e.g.*, App. 8a (referring to the master as one of the "parties" to the agreement). This was an error. A "fishing agreement" under § 10601 is simply an employment contract, and the parties to an employment contract are the employee and the employer – in this case, Mr. Harper and petitioner.

Prior attempts to characterize the master of a fishing vessel as the "employer" have generally been efforts by the true employer to escape its legal responsibilities. In *United States v. W.M. Webb, Inc.*, 397 U.S. 179 (1970), for example, the owners of commercial fishing vessels sought to avoid the payment of social security and unemployment taxes, arguing that crew members were "employed" by the master. *See id.* at 181-82. Applying this Court's *Webb* test, the lower courts have consistently held that

---

because there was no relevant written agreement. Thus there had been no signature by any representative of the vessel owner or employer. In two such cases, the court announced in dicta that the master should have signed an agreement. *See Crowell v. United States*, 6 F. Cas. 912, 913 (C.C. D. Mass. 1856) (No. 3447); *Bjornsson v. U.S. Dominator, Inc.*, 863 P.2d 235, 237 (Alaska 1993).

fishermen are employed by the vessel owner, not the master, unless the master exercises a demise charterer's control of the vessel. *See, e.g., Bishop v. United States*, 476 F.2d 977, 978 (CA5 1973) ("seamen are employees of the shipowner, not the shipmaster"). Similarly, some companies have sought to avoid liability under the Jones Act, 46 U.S.C. app. § 688, which permits injured seamen to sue their employers, by arguing that the crews of fishing vessels are employed by the master. Once again, the courts have consistently held that fishermen are employed by the vessel owner, not the master, unless the master is essentially a demise charterer. *See, e.g., Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495, 1498-1500 (CA9 1995); *Deal v. A.P. Bell Fish Co.*, 674 F.2d 438 (CA5 1982); *Wheatley v. Gladden*, 660 F.2d 1024 (CA4 1981).

Once it is recognized that petitioner was Mr. Harper's employer, and thus the other party to the employment contract, it follows that the master's role in signing the contract could only have been as petitioner's agent. It is true that the master, acting as petitioner's agent, could have bound petitioner to the contract. But the master's signature here would have been completely redundant. Petitioner was already bound because Ms. Veness signed as its agent.

B. The Master's Signature Is Not Required to Accomplish the Statutory Purposes of § 10601

The Ninth Circuit concluded that "requiring the master . . . to sign the agreement reasonably effectuates the purposes of § 10601." App. 10a. But the court of appeals offered no explanation of how the master's signature

advanced the congressional purposes. In truth, all of Congress's purposes were accomplished through Mr. Harper's contract with petitioner, notwithstanding the absence of the master's signature.

Although neither the statute nor its legislative history define "the purposes of § 10601," decisions under § 10601 and related statutes have suggested several plausible congressional goals. In *TCW Special Credits v. Chloe Z Fishing Co.*, 129 F.3d 1330, 1332 (CA9 1997), for example, the court explained that § 10601 "was designed to change [the] practice" of hiring fishermen under "informal and often oral" agreements. The requirement of a written contract protects fishermen "from the duress, coercion, or deception that might result if masters were permitted to ship them out to sea without first providing written articles." *Seattle-First National Bank v. Conaway*, 98 F.3d 1195, 1199 n.2 (CA9 1996). In *Sylvis v. Rouge Steel Co.*, 873 F.2d 122, 125 (CA6 1989), the court suggested that a virtually identical statute served "to verify the seaman's occupation and wages," and "to avoid disputes about wages and other terms and conditions of employment." *See also, e.g., Bjornsson v. U.S. Dominator, Inc.*, 863 P.2d 235, 240 (Alaska 1993) ("point of section 10601 is to avoid later misunderstandings and differing interpretations"). All of these purposes, however, are fully accomplished by having a written employment contract between the seaman and the employer that fully binds the employer. All of these purposes were accomplished in the present case.

Even if there were some reason for desiring to have the master personally bound to the contracts between his employer and the crew members, the master's signature on fishing agreements would still be unnecessary. Most

fundamentally, the master is the employer's representative on the vessel. Because the employer is bound by the terms of the crew members' contracts, the master is similarly bound to respect them. If the master were to deny a crew member any of the rights granted by the contract, that breach would be imputed to the employer and the employer would be fully liable for it.

It is sometimes said that the master is personally liable for the wages of his crew. *See, e.g.*, 1 MARTIN J. NORRIS, THE LAW OF SEAMEN § 12:1, at 424 & n.3 (4th ed. 1985). Any right that the seaman may have against the master would be of questionable value (and thus would rarely be exercised) in light of the seaman's rights against the employer (which is contractually liable) and the vessel (which is liable *in rem*). But even if the master's personal liability were an important issue, it would not depend on his having signed the employment contract (any more than the vessel itself would be expected to sign the contract to incur *in rem* liability). Whatever the master's liability, it is based on his status as master, not on his having contractually agreed to assume it.[2] Thus in *Farrel v. M'Clea*, 1 U.S. (1 Dall.) 392, 393 (Pa. C.P. 1788), a seminal case on this issue, the court held that the master was liable for a seaman's wages under the general

---

[2] Professors Gilmore and Black similarly discuss the seaman's right to maintenance and cure, which runs with the right to recover wages, using status terms: "It is the fact of employment or, more accurately, the fact that the seaman is engaged in the service of the ship which creates the right and not the form of contract." GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY § 6-7, at 287 (2d ed. 1975).

maritime law notwithstanding the fact that the seaman had been engaged not by the master but by the owner.

Perhaps the clearest explanation of the irrelevance of a master's signature on an employment contract (and of the contract's enforceability without the master's signature) is found in a decision of the New York Court of Common Pleas in the mid-nineteenth century:

> [The plaintiff seaman argues that] the captain of the vessel did not sign the shipping articles. It is sufficient to dispose of this by saying that the act of congress, which requires that there should be an agreement in writing or in print, only requires that it should be signed by the "seamen and mariners." Its execution and delivery by them and its acceptance by the master, and his going to sea in pursuance thereof, made it good and sufficient evidence for their protection for all the purposes contemplated by the act.

Botker v. Towner, 3 E.D. Smith 132, 134 (N.Y. C.P. 1854).

C. The Ninth Circuit Has Exalted Form Over Substance

There was no objection to the substance of Mr. Harper's contract with petitioner. *See, e.g.*, App. 4b. Every substantive provision that § 10601 (or any other binding statute) required was included in Mr. Harper's detailed contract. *See* App. D. The only possible problem with the contract was one of form: the master failed to sign it. And this is merely a formal objection, because the legal effect of the contract was the same with or without the master's signature. *See supra* at 8-11.

Because the Ninth Circuit's decision is concerned with formalistic procedures rather than substantive protections, the beneficiaries of the decision below would be not the seamen whom Congress sought to protect when it enacted § 10601 but the lawyers who ensure that procedural technicalities are observed. The Ninth Circuit's requirement offers no additional protection to seamen. *See supra* at 9-11. In fact, it would even be unlikely to result in many masters' signatures on employment contracts. Under current practice, for example, the master is responsible for signing bills of lading evidencing cargo shipped on a commercial vessel, but in reality most bills of lading are signed by an agent who nominally acts "for the master." *See, e.g., Thyssen Steel Co. v. M/V Kavo Yerakas*, 50 F.3d 1349, 1352 (CA5 1995). Under the decision below, therefore, employers could simply add the words "for the master" to a signature line, and the same people could continue to operate business as usual – with no change for seamen.

The Ninth Circuit may be correct "that lawyers and shipping executives can easily craft a form of contract that complies with [the court of appeals' new interpretation of] § 10601." App. 16a. But the utter pointlessness of the exercise at the very least raises serious questions about the wisdom of requiring it. When potentially ruinous liability, *see infra* at 18-21, turns on the form of words chosen in a contract, but nothing else turns on it, procedural technicalities have run amok. The decision below creates the absurd situation in which petitioner is punished just as seriously for having failed to anticipate the Ninth Circuit's new interpretation of § 10601 as it

would have been if it had blatantly refused to give Mr. Harper a written contract at all.

II

THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THE SIXTH CIRCUIT'S STANDARD GOVERNING THE STATUTORY REQUIREMENTS FOR SEAMEN'S EMPLOYMENT CONTRACTS

In *Sylvis v. Rouge Steel Co.*, 873 F.2d 122 (CA6 1989), the Sixth Circuit confronted – in the context of the coasting trade – essentially the same situation as is presented here. Because Mr. Sylvis was a seaman on a different type of vessel than Mr. Harper, his employer was subject to a different statute that required a written employment contract,[3] but the core provisions were virtually the same as § 10601 (the statute at issue here). The *Sylvis* statute provided that "[b]efore proceeding on a voyage, the master of a vessel to which this chapter applies shall make a shipping articles agreement in writing with each seaman

---

[3] Congress has enacted three different provisions requiring employers to make employment contracts with their seamen, each of which applies in a different context. For fishing vessels, the governing statute is 46 U.S.C. § 10601 (the successor to 46 U.S.C. § 531 (1982)), i.e., the statute at issue in this case. In the coasting trade, the governing statute is 46 U.S.C. § 10502 (the successor to 46 U.S.C. § 574 (1982)), i.e., the current version of the statutes at issue in *Sylvis*. And in the overseas trade, the governing statute is 46 U.S.C. § 10302 (the successor to 46 U.S.C. § 564 (1982)). Because § 10502, as it was in force in *Sylvis*, and its predecessor statute, § 574, are substantially the same, the textual discussion of *Sylvis* will refer only to § 10502.

on board" that includes certain specified items.[4] Failure to comply with this provision would have triggered liability under 46 U.S.C. § 10508(a) for additional wages, calculated according to the highest wages paid to other seamen in similar situations. In other words, a violation of the *Sylvis* statute would have subjected an employer to exactly the kind of penalty that Mr. Harper seeks here.

Mr. Sylvis had signed an individual "employment agreement" that did not include all of the required items. He was also a member of the union that had negotiated a collective bargaining agreement with his employer, and the court concluded that this collective bargaining agreement sufficiently covered the omitted items. Mr. Sylvis,

---

[4] A direct tabular comparison of § 10601(a) and 46 U.S.C. § 10502(a) (1988), the statute applicable in *Sylvis*, illustrates how the core provisions were virtually the same:

46 U.S.C. § 10601(a) (the statute at issue here)	**46 U.S.C. § 10502(a) (1988) (the *Sylvis* statute)**
"Before proceeding on a voyage,	"Before proceeding on a voyage,
the master or individual in charge of a fishing vessel, fish processing vessel, or fish tender vessel	the master of a vessel to which this chapter applies
shall make a fishing agreement	shall make a shipping articles agreement
in writing	in writing
with each seaman e[m]ployed on board . . . ."	with each seaman on board . . . ."

The similarities are obvious, and the differences in substance are those that follow from the difference in context.

citing the omitted items, argued that the individual agreement violated the statutory requirements. He thus brought a class action lawsuit to recover "penalty damages." 873 F.2d at 123.

The Sixth Circuit, rejecting Mr. Sylvis's contentions, held that the employment agreement and the collective bargaining agreement, when taken together, "satisfy the intent, if not the letter" of the statute. *Id.* at 126. Because the documents were "dated and verif[ied] the seaman's occupation and wages," *id.* at 125; were sufficient "to avoid disputes about wages and other terms and conditions of employment," *id.*; and otherwise provided the protection that the statute intended for seamen to receive, *see id.* at 126, the statutory requirements were effectively satisfied.

The *Sylvis* opinion does not mention whether the master signed the employment agreement. At one point, the court refers to "the employment agreement signed by seamen *and the company.*" *Id.* at 125 (emphasis added). Presumably the master did not sign the collective bargaining agreement. Thus it seems almost certain that the Sixth Circuit upheld a seaman's contract under a statute virtually identical to § 10601 when at least one of the necessary documents constituting the complying contract had not been signed by the master. But in the context of the *Sylvis* opinion, whether the master signed either document was irrelevant. Under the Sixth Circuit's standard, the statutory requirement was satisfied because the relevant documents fully protect the seaman's rights. The *Sylvis* documents did that – with or without the master's signature.

Applying the Sixth Circuit's standard to the undisputed facts of this case, it is undeniable that Mr. Harper's employment contract, App. D, protected his rights just as fully without the master's signature as it would have protected them with his signature. *See supra* at 8-12. Mr. Harper's contract was "dated and verif[ied] the seaman's occupation and wages," *cf.* 873 F.2d at 125; was sufficient "to avoid disputes about wages and other terms and conditions of employment," *cf. id.*; and otherwise provided the protection that the statute intended for seamen to receive, *cf. id.* at 126. Thus the present case would have been decided differently in the Sixth Circuit than it was in the court below. There is a direct inter-circuit conflict on this issue.

The Ninth Circuit attempted to distinguish *Sylvis* on the ground that the case arose under a different statute.[5] This purported distinction is so hyper-technical as to be absurd. As we have shown above, *see supra* at 13-14 &

---

[5] The court of appeals also attempted to distinguish *Sylvis* on the ground that it might not be "consistent with the teaching of [*Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564 (1982)]," App. 11a, which had been decided seven years earlier. According to the Ninth Circuit, *Griffin* teaches "that courts are not free to rewrite admiralty laws simply because the result seems unfair in a particular case." App. 11a. But *Griffin*'s lesson has no application to either these facts or *Sylvis*'s. In *Griffin*, this Court simply applied the double-wage statute, 46 U.S.C. § 596 (1982) (superseded in relevant part by 46 U.S.C. §§ 10313(g), 10504(c)), as Congress wrote it in order to achieve the purpose that Congress sought to achieve. There was no question of substantial compliance. The court below implied a signature requirement into § 10601 that Congress did not write, and applied the statute to achieve a result that Congress never intended.

note 4, the core provisions of the two statutes were virtually identical. The only substantive differences between the statutes involved minor variations in the items that must be included in employment agreements (a requirement not at issue here). For the most part, these minor variations can be explained by the contextual differences between fishing and commercial shipping. It is beyond belief that the *Sylvis* court would have reached a different result based on this distinction without a difference.

III

THE DECISION BELOW CREATES SERIOUS PROBLEMS FOR THE FISHING INDUSTRY

Imposing meaningless procedural obligations that benefit no one is problematic in itself. But the Ninth Circuit's decision is even more damaging. It creates serious problems for an important U.S. industry that is ill-equipped to handle the burden.

A. The Decision Below Invites Wasteful Litigation Burdening Both the Courts and the Fishing Industry

The Ninth Circuit recognized that its decision "may lead to litigation of contracts that were otherwise assumed valid." App. 12a. Indeed, the Ninth Circuit's decision is an open invitation to scores of class-action[6]

---

[6] As a practical matter, suits that focus on recovering penalty damages will typically be filed as class actions. The additional wages that could potentially be recovered by a single crew member are so modest that an individual lawsuit would

lawsuits seeking additional compensation for fishermen who have already been fully paid under the terms of their contracts. This is not a matter for speculation. "Copy-cat" suits have already been filed in the Western District of Washington. *See, e.g., Landino v. F/V Shirley R.*, No. C02-377C (W.D. Wash., filed Feb. 14, 2002). The temptation to pursue such a windfall is apparently irresistible.

For reasons that we have suggested above, all of this litigation is wasteful. Rights of individual crew members will not be vindicated. *See supra* at 12. They have already received the wages to which they are entitled, and all of the protections that Congress contemplated. In fact, individual crew members are unlikely to receive much of anything as a result of these actions. *See supra* note 6. But the burden on vessel owners and employers is potentially ruinous. *See infra* at 18-21. And the burden on the courts that must resolve this pointless litigation will be significant, as well.

B. The Decision Below Imposes a Potentially Ruinous Burden on the Fishing Industry

The precarious financial status of the fishing industry – which is exposed to extreme physical risks, affected by

---

not be economically feasible. If the wage claims of several hundred crewmen are aggregated, however, the contingent fee for a successful class-action lawsuit could be very substantial. If an individual action is being filed in any event (for example, a personal injury action), then a wage claim might be added to the complaint.

volatile markets, subject to pervasive government regulation, and dependent on the vagaries of finding and catching fish – is so well-known that it has been discussed in popular literature. *See* SEBASTIAN JUNGER, THE PERFECT STORM (1997) (describing the physical risks, the volatile markets, the government regulation, and the changing fortunes of fishing). This precarious financial status is confirmed in a variety of more traditional sources.[7] Imposing substantial additional costs on a fishing company after the season has ended, long after the company has had any opportunity to plan for or budget the additional costs, would be ruinous for many employers.

---

[7] *See, e.g., Oversight Hearing on Individual Fishing Quotas (IFQs) Before the Subcomm. on Fisheries, Conservation, Wildlife and Oceans of the House Comm. on Resources*, 107th Cong., 2d Sess. (Feb. 13, 2002) (available at http://resourcescommittee.house.gov/107cong/fisheries/2002feb13/agenda.htm) (testimony of Fred Christiansen, Chairman, Gulf of Alaska Coastal Communities Coalition) (expressing concern that "fisheries-dependent communities . . . will not have long-term viability unless some creative strategies are employed to rebuild a sustainable economic base"); *id.* (testimony of Jay Stinson, President, Alaska Draggers Association) (noting that "Alaska salmon industry is on the ropes" and describing Alaska halibut fishermen as "economically marginalized"); *Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: Oversight Hearing Before the Subcomm. on Fisheries, Conservation, Wildlife and Oceans of the House Comm. on Resources*, 107th Cong., 1st Sess. 63 (2001) (Serial No. 107-26) (testimony of Gordon Blue, President, Crab Rationalization and Buyback Group) ("We are in serious trouble in the crab fisheries."); *id.* at 69 ("[F]or four of the past six years, vessels have operated at loss in the [Bering Sea and Aleutian Islands crab] fishery.").

The present case illustrates the problem. Although petitioner denies that Mr. Harper is entitled to any additional wages whatsoever, his own estimate of the damages is still noteworthy. Mr. Harper informed the district court that the damages totaled 5.5 million dollars for the class that he purports to represent. This sum is significantly more than petitioner's total net worth. For many fishing companies, having to pay even a fraction of such damages would be enough to drive them out of business.

Even for companies that can remain in business, liability for substantial unbudgeted costs would be a significant competitive disadvantage. The competitive burden that the Ninth Circuit seeks to impose on West Coast fishing companies is particularly significant because such a high proportion of the U.S. fishing industry is based within the jurisdiction of the Ninth Circuit. In the year 2000 (the most recent year for which statistics are available), almost 5.8 billion pounds of fish were landed in Alaska, California, Hawaii, Oregon, and Washington by commercial fishermen. *See* National Marine Fisheries Service, Fisheries of the United States 2000, at 6 (August 2001) (table of U.S. domestic landings, by region and by state). This represents 64% of the nation's total. *See id.* With such a high proportion of the industry affected by the ruling below, international competitiveness will also be impacted. Not only is the overseas fishing industry free of this burden, many countries subsidize their fishing fleets. *See, e.g.*, PETER B. DOERINGER & DAVID G. TERKLA, TROUBLED WATERS: ECONOMIC STRUCTURE, REGULATORY REFORM, AND FISHERIES TRADE 119 (1995) (noting "extensive Canadian government subsidies to the fishing industry"); 1 European Commission, Green Paper: The Future of the

Common Fisheries Policy 16-17 (2001) (noting "the injection of about EUR 1.1 billion [$1.07 billion] of public money into the fisheries sector each year").

IV

THE DECISION BELOW CLEANLY RAISES AN IMPORTANT ISSUE THAT THIS COURT SHOULD RESOLVE

We recognize that the proper interpretation of 46 U.S.C. § 10601 does not have the wide-spread appeal of many of the issues before this Court, but it is an issue of overwhelming importance to the U.S. fishing industry, and an issue on which the decision below is in direct conflict with the standards announced by the Sixth Circuit. It is an issue that this Court should resolve.

The present case presents an ideal vehicle. The relevant facts are straightforward and undisputed. (Because the district court ruled on Mr. Harper's motion for partial summary judgment, respondents are in any event unable to dispute the facts. *See, e.g., Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 456 (1992).) Moreover, the facts of the case squarely raise the question presented in the petition. Finally, the facts of this case are typical of the hiring procedures that have been practiced in the fishing industry for years. Major employers today routinely delegate the hiring of new crew members (save in emergencies or other exceptional circumstances) to shore-based personnel offices rather than to the master on the vessel. *See generally* LANE C. KENDALL & JAMES J. BUCKLEY, THE BUSINESS OF SHIPPING 173-179 (7th ed. 2001). By answering the question presented here, therefore, the Court will

effectively dispose of the copy-cat cases (foreseen by the Ninth Circuit) that are already pending, *see supra* at 17-18, and determine whether even more such cases will be filed.

The absence of factual complications is matched by an absence of legal complications. The proper interpretation of § 10601 was the sole issue decided in both of the courts below, so no extraneous legal questions will distract the Court's attention. And no procedural difficulties exist to complicate the Court's analysis.

The interlocutory nature of the case does not counsel against this Court's resolution of the governing legal issue immediately. Although significant decisions remain for the district court on remand, including class certification questions and the calculation of damages, none of those decisions would affect the question presented here. The remaining issues are so different from the underlying legal issue decided by the Ninth Circuit that any district court proceedings on remand would not further inform this Court's deliberations, nor could they moot the case. And resolution of the fact-specific issues on remand would be highly unlikely to raise any new certworthy issues. In short, a subsequent petition for certiorari after a final judgment would offer this Court no better opportunity to resolve the important legal issue that is raised here, but further proceedings at this stage would unnecessarily burden both the lower courts and the parties.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL F. STURLEY
Counsel of Record
727 East Dean Keeton Street
Austin, Texas 78705-3299
(512) 232-1350
(512) 471-6988 (fax)

ANTHONY J. GASPICH
GASPICH & WILLIAMS PLLC
1809 Seventh Avenue, Suite 609
Seattle, Washington 98101-1393
(206) 956-4204
(206) 956-4214 (fax)

Attorneys for Petitioner

June 28, 2002

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOE HARPER, and the class of similarly situated persons; ALEX MORROW, and the class of similarly situated persons; JASON MCBRIDE, and the class of similarly situated persons, *Plaintiffs-Appellees,* v. UNITED STATES SEAFOODS LP; SEAFREEZE ALASKA F/V, *Defendants-Appellants.*	No. 01-35264 D.C. No. CV-00-01610-MJP OPINION

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Argued and Submitted
December 5, 2001 – Seattle, Washington

Filed January 29, 2002

Before: Diarmuid F. O'Scannlain, Susan P. Graber, and M. Margaret McKeown, Circuit Judges.

Opinion by Judge McKeown

COUNSEL

Anthony J. Gaspich (argued), Gaspich & Williams, P.L.L.C., Seattle, Washington, for defendant-appellant United States Seafoods, L.P.

George H. Luhrs (argued), Seattle, Washington, for plaintiffs-appellees Joe Harper and the class of similarly situated persons, et al.

Jay H. Zulauf (argued), and Christopher S. McNulty, Mundt MacGregor, L.L.P., Seattle, Washington, for defendant-intervenor F/T Seafreeze Alaska, and amicus curiae At-sea Processors Association.

OPINION

McKEOWN, Circuit Judge.

This case calls for us to decide whether an admiralty statute that requires the master of a fishing vessel to "make an . . . agreement in writing" with each crewmember before a voyage also requires the master's signature on the agreement. 46 U.S.C. § 10601. Although the predecessor statute dates from the late 1770s, surprisingly, this is a question of first impression in the Ninth Circuit. The district court granted partial summary judgment in favor of a seaman who was employed under a contract that the master did not sign. The district court held that the contract was invalid because the statute required this signature. We agree and affirm.

BACKGROUND

Defendant-Appellant United States Seafoods L.P. employed Plaintiff-Appellee Joe Harper on its fishing vessel Seafreeze Alaska in early 2000. The Seafreeze Alaska is a factory trawler that operates out of Alaska, in the Bering Sea. United States Seafoods hired Harper

through its Seattle office, and its recruiting and hiring coordinator signed the employment contract on behalf of the company. It is undisputed that the vessel's master did not sign this contract.

Harper and two other crewmembers filed an action on behalf of themselves and a putative class against United States Seafoods L.P. in personam, and the F/T Seafreeze Alaska in rem (collectively, "U.S. Seafoods"), primarily claiming that their contracts were defective.[1] Harper moved for partial summary judgment on the issue of whether his contract was invalid under 46 U.S.C. § 10601. In a carefully considered order, the district court granted the motion, reasoning that the statute unambiguously required the master to sign. Order on Plaintiff's Motion for Partial Summary Judgment, *Harper v. United States Seafoods*, No. C00-1610P (W.D. Wa. Mar. 8, 2001). Because there was no evidence that the master had in any way participated in drafting the agreement, the court declined to consider whether the statute could be satisfied by some participation short of signing the agreement. The district court specifically declined to rule on "damages, if any." *Id.* at n.2.

---

[1] The parties dispute whether the action also raises questions about whether Harper and the other crewmembers were fairly paid under the contract. It is unnecessary for us to resolve these issues because of the narrow scope of this appeal.

JURISDICTION

We have jurisdiction in this interlocutory admiralty appeal pursuant to 28 U.S.C. § 1292(a)(3).[2] "Ordinarily, interlocutory orders are not appealable, but 28 U.S.C. § 1292(a)(3) 'creates an exception to the final judgment rule for orders determining the rights and liabilities of the parties to admiralty cases.' " *Royal Ins. Co. of Am. v. S.W. Marine*, 194 F.3d 1009, 1013 n.2 (9th Cir. 1999) (quoting *Kesselring v. F/T ARCTIC HERO*, 30 F.3d 1123, 1125 (9th Cir. 1994)).

DISCUSSION

This case presents a pure question of statutory interpretation, which we review de novo. *See Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 819 (9th Cir. 2001). Following the direction of the Supreme Court in *Duncan v. Walker*, 533 U.S. 167, 121 S. Ct. 2120, 2124 (2001), we look first to the text of the statute, which is clear and unambiguous:

> (a) Before proceeding on a voyage, the master or individual in charge of a fishing vessel, fish processing vessel, or fish tender vessel shall make an[sic] fishing agreement in writing with each seaman enployed [sic] on board if the vessel is –
>
> (1) at least 20 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title

---

[2] All remaining motions, including the motion for class certification, were stayed pending resolution of the appeal.

as prescribed by the Secretary under section 14104 of this title; and

(2) on a voyage from a port in the United States.

(b) The agreement shall be signed also by the owner of the vessel.

(c) The agreement shall –

(1) state the period of effectiveness of the agreement;

(2) include the terms of any wage, share, or other compensation arrangement peculiar to the fishery in which the vessel will be engaged during the period of the agreement; and

(3) include other agreed terms.

46 U.S.C. § 10601.

The unambiguous text of 46 U.S.C. § 10601, which is supported by its historical development, requires the master to sign the agreement. The written agreement is a two-way street. Where there is a valid agreement, wages are determined according to contract and the crewmembers have only six months within which to file suit on in rem claims. 46 U.S.C. § 10602. And, where there is no controlling written agreement, wages are based on a statutory formula: the higher of the amount agreed to or the highest rate of wages at the port where the seaman was engaged. 46 U.S.C. § 11107.

I. Historical Backdrop of Written Contracts And 46 U.S.C. § 10601

Statutory protection of the seafarer's right to a written contract dates back to one of the first acts of Congress, and 46 U.S.C. § 10601 descends from that venerable tradition. *Seattle-First Nat'l Bank v. Conaway*, 98 F.3d 1195, 1196 (9th Cir. 1996). In 1792, Congress provided that cod fishermen[3] would be entitled to a statutory share of the fishing vessel's proceeds "unless the skipper or master thereof shall, before he proceeds on any fishing voyage, make an agreement in writing or in print, with every fisherman employed therein . . . which agreement shall be endorsed or countersigned by the owner." Act of 1792, ch. 6, § 4, 1 Stat. 229, 231. The legislation went on to provide "[t]hat where an agreement or contract shall be so made and signed," the vessel would be liable for six months to the fishermen for their share. *Id.* § 5. This protection was extended to mackerel fishermen in 1865, March 3, 1865 Extension Act, 13 Stat. 535, and the statute was codified as R.S. 4391 (1878). *See Caffray v. The Cornelia M. Kingsland*, 25 F. 856, 859 (S.D.N.Y. 1885). This provision was then codified at 46 U.S.C. § 531, the immediate predecessor to § 10601. As amended over the years, § 531 read, just prior to its repeal in 1988:

> The master of any vessel [in the cod or mackerel fisheries] . . . shall, before proceeding on such fishing voyage, make an agreement in writing with every fisherman who may be employed therein. . . . Such agreement shall be

---

[3] The requirement of a written contract for merchant seamen, as distinguished from fishermen, dates from 1790 and the First Congress Act of 1790, ch. 29, § 1, 1 Stat. 131.

> indorsed or countersigned by the owner of such fishing vessel or his agent.

46 U.S.C. § 531.

Cases under the predecessor acts refer to the master's signature, suggesting that our interpretation of the successor statute, § 10601, is consistent with the historical interpretation. *See e.g., United States v. Atkins*, 24 F. Cas. 885, 887 (D. Mass. 1856) (No. 14, 474) (noting that a "paper was signed by the master and fishermen and countersigned by the owner"); *Crowell v. United States*, 6 F. Cas. 912, 913 (C.C.D. Mass. 1856) (No. 3447) (holding an agreement invalid because it was not "in writing or print, signed by the master, and countersigned by the owner"); *Whalen v. The Silver Spring*, 29 F. Cas. 852, 852 (D. Mass. 1854) (No. 17,477) (noting valid agreements were "signed by the captain and three men"). The requirement of a master's signature was thus assumed in prior case law.

Section 10601, which updated the statute's language and extended its coverage beyond the cod and mackerel industry to all fishing vessels, was enacted as part of the Commercial Fishing Industry Vessel Safety Act of 1988, titled: "An Act to provide for the establishment of additional safety requirements for fishing industry vessels, and for other purposes." Pub. L. 100-424, 102 Stat. 1585. The only legislative history relates to safety and limitation of liability. H.R. Rep. 100-729, 1988 U.S.C.C.A.N. 2149. The history of this statute thus illustrates that the requirement of the master's signature was carried forward from the Second Congress.

II. Construction of 46 U.S.C. § 10601

We next turn to the text of § 10601 "to construe what Congress has enacted." *Duncan*, 121 S. Ct. at 2124. In a related context, we have previously held that this provision is "perfectly clear facially." *Seattle-First Nat'l Bank*, 98 F.3d at 1197. We again conclude that the plain text is controlling: "if the language of a statute is clear, we look no further than that language in determining the statute's meaning." *Id.* (citations and internal quotation marks omitted). The only exception would be for "absurd or impracticable consequences," *id.*, which are not present here.

The requirement in § 10601(a) that the master and the seaman "make a [ ] fishing agreement in writing" facially requires both parties to sign the agreement. More generally, § 10601 requires that the fishing agreement contain certain substantive provisions. For example, the agreement must include "the period of effectiveness" and "the terms of any wage, share, or other compensation arrangement." 46 U.S.C. § 10601(c)(1) & (2). It is thus consistent to read § 10601(a) as imposing a concrete requirement that the master sign the agreement.

To "make" an agreement, at least as applied to a written contract, is to execute the agreement in due form. As the district court noted, the pertinent definition from *Black's Law Dictionary* is: "To legally perform, as by executing, signing, or delivering (a document) <to make a contract>." *Black's Law Dictionary* 967 (7th ed. 1999). The most relevant definition in *Webster's* also supports a signature requirement, defining "make" as: "enact, establish . . . to execute in an appropriate manner: draw up < –

a will>< – a deed of transfer>." *Webster's Third New Int'l Dictionary (Unabridged)* 1363 (1961). Making a written agreement is no different. Indeed, the parties agree that executing a contract requires signing it.

Our interpretation of this provision is bolstered in the statute's second paragraph, which requires that "[t]he agreement shall be signed also by the owner of the vessel." 46 U.S.C. § 10601(b).[4] Our analysis of plain meaning includes an examination of the " 'language and design of the statute as a whole.' " *Seldovia Native Ass'n v. Lujan*, 904 F.2d 1335, 1341 (9th Cir. 1990) (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988)). If possible, every word should be given effect. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979). Here, to give the word "also" effect in subsection (b), we must conclude that subsection (a) imposes a signing requirement.

U.S. Seafoods argues that § 10601 should be construed to require only the fisherman's, and not the master's signature – in other words, that to "make an . . . agreement in writing" the seaman must sign, but the master need not sign. To pick and choose who should

---

[4] We do not address Harper's argument, which is raised for the first time on appeal, that the contract also failed in this owner signature requirement. U.S. Seafoods appears to have used a standard form contract between the seafarer and the "employer," which was apparently also the owner here. On its face the contract does not include a signatory with an owner designation. Whether the employer is also the owner is, of course, a question of fact. Nonetheless, we note that to avoid ambiguity, the form could simply include a signature line for the owner or designate the company/employer as the owner if that is the true relationship.

sign results in a bizarre reading of the statute. The Supreme Court has rejected such strained constructions of statutes. *See Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 329 (2000).

Finally, we agree with the district court that, far from being absurd or impracticable, requiring the master or individual in charge to sign the agreement reasonably effectuates the purposes of § 10601. The statutory scheme was intended to protect the seafarer. *Key Bank of Wash. v. S. Comfort*, 106 F.3d 1441, 1443 (9th Cir. 1997). Indeed, § 10601 is part of a subtitle of the code entitled "Merchant Seaman Protection and Relief." The seagoing master is the true "captain of the ship," while the owner generally controls the purse strings. It makes good sense for both parties to acknowledge and be bound by the terms of the crew member agreement.

U.S. Seafoods argues that "technical deficiencies" should not be considered a breach of the statute. Amicus At-sea Processors Association further develops this argument, urging the court to excuse a violation of § 10601 where there has been "substantial compliance."[5] Phrased

---

[5] The Ninth Circuit has frequently rejected substantial compliance arguments. *See, e.g., Long v. Coast Resorts, Inc.*, 267 F.3d 918, 921-23 (9th Cir. 2001) (Americans with Disabilities Act); *S. Cal. Gas Co. v. Util. Workers Union of Am., Local 132*, 265 F.3d 787, 795-96 (9th Cir. 2001) (Department of Transportation regulations); *Bowlin & Son, Inc. v. San Joaquin Food Serv., Inc. (In re San Joaquin Food Serv., Inc.)*, 958 F.2d 938, 940-41 (9th Cir. 1992) (Perishable Agricultural Commodities Act). *But see United States v. Nielsen*, 1 F.3d 855, 858 (9th Cir. 1993) (applying substantial compliance analysis to statute on right to juror information).

either way, this argument does not avail U.S. Seafoods here.

The Supreme Court has counseled that courts are not free to rewrite admiralty laws simply because the result seems unfair in a particular case. In *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 565-66 (1982), the Supreme Court strictly interpreted a related admiralty statute, 46 U.S.C. § 596, "which requires certain masters and vessel owners to pay seamen promptly . . . and authorizes seamen to recover double wages" for delayed payment. *Griffin* overturned circuit precedent allowing the district court to exercise discretion in imposing statutory damages for late payment of wages. The Court reasoned that the statutory per day penalty was consistent with Congress' protective purpose to avoid delay in paying seamen their wages, and that changing harsh results of literal application of the statute was a job for the legislature, not the courts. *Id.* at 572-75. The same is true here.

U.S. Seafoods relies primarily on a Sixth Circuit case, which involved a merchant seaman's seasonal employment agreement that did not contain certain terms required under 46 U.S.C. § 10502 and its predecessor. *See Sylvis v. Rouge Steel Co.*, 873 F.2d 122, 125 (6th Cir. 1989). The court relied heavily on a collective bargaining agreement that contained "explicit provisions governing seamen's compensation," reasoning that, combined with the seasonal employment agreement, the agreements satisfied "the intent, if not the letter" of the admiralty statutes. *Id.* at 126.

We are not persuaded that *Sylvis* is consistent with the teaching of *Griffin*. *Sylvis* is also distinguishable. Not

only was *Sylvis* decided under a different statute, it involved a separate collective bargaining agreement. *Cf. Gardiner v. Sea-Land Serv., Inc.*, 786 F.2d 943 (9th Cir. 1986) (upholding collective bargaining agreement specification of maintenance pay, although less than judicially defined minimum amount).

We do not hold that substantial compliance analysis would never be appropriate under this statute. This is not a case in which the master assented to the agreement by means other than an original signature on a paper contract – by electronic mail, or (at the other extreme) by having hand-written the contract in the seafarer's presence, for example. We hold only that under the circumstances here, where the master did nothing even arguably equivalent to signing the contract, the requirements of § 11601 have not been met.

We are not unmindful of concerns that adherence to the statutory mandate may lead to litigation of contracts that were otherwise assumed valid. U.S. Seafoods argues that "penalty wages" will apply if the contract is held invalid. It is true that a seaman employed "contrary to a law of the United States" is entitled to "the highest rate of wages at the port from which the seaman was engaged or the amount agreed to be given the seaman at the time of engagement, whichever is higher." 46 U.S.C. § 11107. We note, however, that although we have sometimes characterized § 11107 as imposing a penalty, *see, e.g., Seattle-First Nat'l Bank*, 98 F.3d at 1198, it is perhaps better characterized as merely providing a statutory default to prevailing market wage in the case of an invalid contract. Thus, we have held that the wages must be computed with

respect to the seaman's actual rate, not the highest possible rate on the ship. *TCW Special Credits v. Chloe Z Fishing Co.*, 129 F.3d 1330, 1334 (9th Cir. 1997). We therefore decline to alter our interpretation of the clear meaning of § 10601 based on the ramifications of § 11107. We do not reach the question of the applicability of § 11107, because the district court specifically reserved the issue of damages.

As we have explained in previous cases, the statutory scheme also benefits the vigilant employer. *See Key Bank of Wash.*, 106 F.3d at 1443; *Seattle-First Nat'l Bank*, 98 F.3d at 1198-99. A fishing vessel that complies with the statutory requirements is protected by a six-month statute of limitations on in rem claims. 46 U.S.C. § 10602. This benefit is the quid pro quo for giving the seafarer a written contract. We are thus persuaded that giving § 10601 its most straightforward interpretation, requiring the master to sign, is consistent with the overall design and purpose of the statutory scheme.

III. Analysis of Other Admiralty Statutes

We are not persuaded by U.S. Seafoods' effort to resuscitate the contract through reference to related admiralty provisions that contain more explicit text directing the master to sign.[6] *See* 46 U.S.C. §§ 10302, 10305 and

---

[6] U.S. Seafoods also attempts to find support in the 1792 statute, which refers to the agreement as "so made and signed." Act of 1792, ch. 6, § 5, 1 Stat. 229, 231. Contrary to U.S. Seafoods' interpretation, we read this phrase to underscore Congress' understanding that the master would sign the written contract.

10502. These statutes require written shipping agreements for other types of seamen. As an initial matter, we note that these statutes are not particularly instructive because there is no evidence that Congress intended us to harmonize or cross-reference the statutes. *See U.S. West Communications, Inc. v. Hamilton*, 224 F.3d 1049, 1053 (9th Cir. 2000) (as amended) (citing *Erlenbaugh v. United States*, 409 U.S. 239, 244 (1972), which stated that duty to harmonize is strongest for statutes passed within the same Act); *United States v. Granderson*, 511 U.S. 39, 51 (1994) (holding that discrete, differently worded probation and supervised release provisions should not be interpreted in pari materia). To the extent these statutes may be fairly considered in construing § 10601, we think that they tend to support, not undermine, the interpretation that to "make an . . . agreement in writing" both parties must sign.

Sections 10302 and 10305 do not cast doubt on our interpretation of § 10601. These statutes detail agreement requirements for non-fishermen merchant seamen, on U.S.-to-foreign voyages, mandating that the "owner, charterer, managing operator, master, or individual in charge shall make a shipping agreement in writing with each seaman before the seaman commences employment." 46 U.S.C. § 10302(a); *see also* 46 U.S.C. §§ 10301, 10303(c). In 1872, Congress created shipping commissioners with responsibility for looking after merchant seamen, and, in 1873, amended the shipping agreement provisions to require signature in the presence of the shipping commissioner. *United States v. The Grace Lothrop*, 95 U.S. 527, 530 (1877). A 1993 amendment changed "shipping commissioner" to "master or individual in charge." Pub. L. 103-206 § 403.

The statute now provides:

> The agreement required by section 10302 of this title shall be signed –
>
> (1) first by the master and dated at that time, after which each seaman shall sign; and
>
> (2) in the presence of the master or individual in charge.

46 U.S.C. § 10305. Given its history, this provision is best understood as an elaboration of the manner in which the agreement is to be signed, not the addition of a signature requirement to a provision that otherwise would not require it.

U.S. Seafoods' argument with respect to § 10502 is similarly unavailing. Section 10502, which protects seamen on coastwise voyages, mandates: "The owner, charterer, managing operator, master, or individual in charge shall make a shipping agreement in writing with each seaman before the seaman commences employment." 46 U.S.C. § 10502(a). It goes on to state, in the same section, that "[e]ach shipping agreement must be signed by the master or individual in charge or a representative of the owner, charterer, or managing operator, and by each seaman employed." 46 U.S.C. § 10502(d). This section is best understood as a clarification of the disjunctive list in § 10502(a), allowing any one of the listed parties to sign. Section 10601, in contrast, requires both the master's and "also" the owner's signature. The related statutes, if anything, show a congressional understanding that making a written agreement in this context involves signing it. The requirements of each statute must, however, be interpreted independently.

Conclusion

In an age of digital communications, the requirement that the contract bear the signature of both the master and the owner is neither unwieldy nor unworkable. Ships are no longer confined to the now-abandoned Morse code or ship-to-shore telephones. Electronic communication is readily available both on land and at sea. With the strictures of the statute in mind, we are confident that lawyers and shipping executives can easily craft a form of contract that complies with § 10601.

The judgment of the district court is AFFIRMED, and the case is REMANDED for further proceedings consistent with this opinion.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOE HARPER, JASON MCBRIDE and ALEX MORROW, and the class of similarly situated persons, Plaintiffs, v. UNITED STATES SEAFOODS, L.P., and F/V SEAFREEZE ALASKA, Defendants.	No. C00-1610P ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (Filed Mar. 8, 2001)

This matter comes before the Court on Plaintiff Joe Harper's Motion for Partial Summary Judgment. Having reviewed the memoranda and supporting materials submitted by all parties, and having heard oral argument, Plaintiff Joe Harper's motion is GRANTED.[1] The bases for the Court's ruling are set forth more fully below.

---

[1] The Court had indicated at oral argument on February 21, 2001 that the parties would receive a written order on this matter within approximately one week. On February 28, 2001 a significant earthquake impacted the entire Pacific Northwest region. The United States Courthouse in Seattle was closed due to earthquake damage from February 28, 2001-March 4, 2001. The Court was thus unable to generate its written order within the timeline proposed to the parties.

BACKGROUND

On January 11, 2000, Plaintiff Joe Harper signed a contract with Defendant United States Seafoods, L.P. ("U.S. Seafoods") whereby Mr. Harper agreed to a period of employment as a processor aboard the F/T Seafreeze Alaska ("the Seafreeze"). Declaration of Gerald F. Brennan at Ex. A, pp. 5-8. At all times relevant to this litigation, U.S. Seafoods owned and operated the Seafreeze. Declaration of Gerald F. Brennan at ¶ 1.

The contract was signed on January 12, 2000 by Tracy Veness. Declaration of Gerald F. Brennan at Ex. A, p. 8. Ms. Veness was at all times relevant to this litigation the recruiting and hiring coordinator for U.S. Seafoods. Declaration of Gerald F. Brennan at ¶ 5. Ms. Veness was authorized to sign crew employment contracts on behalf of U.S. Seafoods. *Id.* The contract was not signed by any person other than Mr. Harper and Ms. Veness. Specifically, the contract was not signed by the master of the Seafreeze.

Mr. Harper completed his contractual duties with U.S. Seafoods on April 28, 2000. The parties appear to agree that Mr. Harper was paid by U.S. Seafoods per the terms of his contract. However, Mr. Harper argues that the contract itself was invalid, because it did not meet the specific requirements of 46 U.S.C. § 10601.[2] Mr. Harper

---

[2] Plaintiff alleges that because his work was performed pursuant to an invalid contract, he is entitled to additional wages, to be calculated by awarding the highest rate of pay for seamen of similar rating out of the same port of hire. Plaintiff cites to 46 U.S.C. § 11107 for this proposition. For purposes of this motion, the Court is required only to address the validity of

moves for partial summary judgment on the issue of the validity of his contract with U.S. Seafoods.

LEGAL AUTHORITY

Mr. Harper alleges that his contract with U.S. Seafoods violated 46 U.S.C. § 10601. That statute reads as follows:

> (a) Before proceeding on a voyage, *the master or individual in charge* of a fishing vessel, fish processing vessel, or fish tender vessel *shall make an (sic) fishing agreement in writing with each seaman* employed on board if the vessel is
>
> > (1) at least 20 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; and
> >
> > (2) on a voyage from a port in the United States.
>
> (b) *The agreement shall be signed also by the owner of the vessel.*
>
> (c) The agreement shall
>
> > (1) state the period of effectiveness of the agreement;
> >
> > (2) include the terms of any wage, share, or other compensation arrangement peculiar to the fishery in which the vessel will be engaged during the period of the agreement; and

---

plaintiff's contract. The question of plaintiff's damages, if any, will not be addressed at this time.

(3) include other agreed terms.

46 U.S.C. § 10601 (emphasis added).

The parties agree that the contract between Mr. Harper and U.S. Seafoods satisfied the requirements of 46 U.S.C. § 10601 in all respects but one. Plaintiff asserts that a contract formed pursuant to this statute requires the signature of the seaman, the owner of the vessel, and the master of the vessel. Because the master did not sign the contract, plaintiff asserts that the contract was invalid. Defendant U.S. Seafoods asserts that the statute requires only the signature of the owner and the seaman.

The Court is obligated to "apply the unambiguous terms of a statute." *Arrington v. Wong*, 237 F.2d 1066, 1070 (9th Cir. 2001) (citations omitted). "If the language of the statute is not clear on its face, courts examine the specific and general statutory context in which the phrase is used in an effort to discern a determinate meaning." *Id.* Statutory construction also includes an examination of the "object and policy" of the legislation. *United States v. Middleton*, 231 F.3d 1207, 1210 (9th Cir. 2000) (citations omitted). When a statutory term is undefined, the Court will "endeavor to give that term its ordinary meaning." *Id.*

A. The plain meaning of the statute is clear and unambiguous

The provisions of 46 U.S.C. § 10601 are not ambiguous. The statute requires that the master make a fishing agreement "in writing with each seaman," and it requires that "the agreement . . . be signed *also* by the owner of the

vessel." 46 U.S.C. § 10601(a)(b) (emphasis added). If the agreement referenced in 46 U.S.C. § 10601(a) must "also" be signed by the owner of the vessel, then it must necessarily first be signed by one or more of the parties making the agreement. The parties making the agreement are the master of the vessel and the seaman. There is nothing in the plain language of the statute to suggest that the master is exempt from the obligation to sign the agreement. In fact, it defies common sense to assume that an agreement, which must necessarily be in writing and signed, would require the signature of only one party.

Defendant U.S. Seafoods concedes that the seaman must sign the agreement, but urges the Court to find that the master need only "facilitate compliance" with the requirements of 46 U.S.C. § 10601. Defendant's Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment at pp. 3, 5. This interpretation stretches very thin the plain meaning of the statute. Assuming, *arguendo,* that defendant is correct that the master's role is simply that of facilitator, plaintiff is still entitled to summary judgment on this matter. On the record presented, the Court can find no evidence that the master of the Seafreeze participated in presenting, explaining, signing, or facilitating compliance with the contract required under 46 U.S.C. § 10601.

B. The ordinary meaning of the language of 46 U.S.C. § 10601 supports a finding that the owner, master, and seaman must sign a fishing agreement.

Because the statute is clear on its face, the Court's analysis is complete. However, because the requirements

of 46 U.S.C. § 10601 appear to be a matter of first impression in the federal courts,[3] the Court will apply additional cannons of statutory construction.

Section § 10601 clearly requires that the owner of the vessel sign any fishing agreement generated pursuant to that statute. The parties agree that the fisherman must also sign such an agreement. The only question before the Court, then, is whether Congress intended that the master of the vessel also sign such an agreement.

The statute requires that "the master or individual in charge of a fishing vessel . . . shall *make* an (sic) fishing agreement in writing with each seaman." 46 U.S.C. § 10601(a) (emphasis added). The statute clearly requires

---

[3] Defendant cites two federal cases which address, in dicta, the requirements of 46 U.S.C. § 10601. *See Fuller v. Golden Age Fisheries*, 14 F.3d 1405, 1407 (9th Cir. 1994) ("Fishing vessels . . . must enter into a written agreement with each seaman employed on board the vessel. . . . Each agreement must be signed by the vessel's owner."); *Seattle-First National Bank v. Conaway*, 98 F.3d 1195, 1197 (9th Cir. 1996) (The written agreement made by the master with each seaman must "be signed by the owner of the vessel.") The Court finds that the language in these cases does not provide guidance regarding which signatures are required on a fishing agreement. The Supreme Court of Alaska has also addressed this question in dicta, and has made a fairly clear pronouncement on the issue: "Federal law requires both the master and owner of a fishing vessel to make and sign an agreement in writing with every seaman employed before beginning a fishing voyage." *Bjornsson v. U.S. Dominator*, 863 P.2d 235, 237 (Alaska 1993). The *Bjornsson* court's interpretation of the statute is clear, and is in conformity with this Court's interpretation of 46 U.S.C. § 10601. However, this Court recognizes that it is not bound by the Alaska court's interpretation of federal law.

that the agreement, signed by the owner and fisherman, be in writing. The Court then examines the meaning of the word "make" to try to discern the intent of Congress regarding the obligations of the master.

Black's law dictionary provides four definitions of the word "make";

> (1) To cause (something) to exist <to make a record>
> (2) To enact (something) <to make a law>
> (3) To acquire (something) <to make money on execution>
> (4) To legally perform, as by executing, signing, or delivering (a document) <to make a contract>

Black's Law Dictionary, 967 (7th Edition 1999).

Given that the fishing agreement is a binding, written document which must be signed by the owner and the fisherman, the fourth definition most closely fits the meaning of the word "make" as it was used by Congress. In this case, the fishing agreement was neither executed, signed, nor delivered by the master of the vessel.

Similarly, *Webster's Dictionary* provides numerous definitions of the word "make." The definition most closely fitting the context of the statute is "to execute in an appropriate manner <make a will>." *Webster's Ninth New Collegiate Dictionary*, 718-19 (1986). In this case, the master of the vessel did not execute the fishing agreement.

C. In enacting 46 U.S.C. § 10601, [C]ongress intended to protect the safety and economic well-being of fishermen.

The Court looks to the "object and policy" of the legislation to clarify the intent of [C]ongress. *Middleton,* 231 F.3d at 1210. The Court is unaware of any legislative debate or discussion which directly addresses the purpose underlying the enactment of 46 U.S.C. § 10601. The statutory provision at issue in this matter was enacted as part of a broad piece of reform legislation entitled The Commercial Fishing Vessel Safety Act of 1988. P.L. 100-424. In addition to creating numerous safety standards for fishing vessels, the legislation also replaced and recodified former 46 U.S.C. § 531. The former statute was similar in content to 46 U.S.C. § 10601, but it only protected fishermen in the cod and mackerel industries. The new statute was broader in scope, applying to all domestic fisherman. Former 46 U.S.C. § 531 was located in the statutory section pertaining to "Regulation of Fishing Voyages." Its successor statute is located in Subtitle II, Part G of Title 46, expressly pertaining to "Merchant Seaman Protection and Relief."

The Court finds that Congress intended to afford protection to fisherman in replacing and recodifying former 46 U.S.C. § 531. Legislation requiring the participation of the owner, as well as the master, in the formation of a contract with a fisherman, furthers the goal of affording such protection. The fisherman in this case signed a contract in Seattle, Washington, and then departed to Alaska, where he spent several months aboard a vessel at sea. Presumably, Mr. Harper had no opportunity for contact with U.S. Seafoods while aboard the Seafreeze. It

makes good sense that the rights of a fisherman would be better protected by ensuring that the land-based owner, as well as the sea-based master, were well aware of the rights and responsibilities addressed in the fisherman's employment contract.

CONCLUSION

The plain language of 46 U.S.C. § 10601 clearly requires the signature of the owner, master, and fisherman on any fishing agreement generated pursuant to that statute. The master of the vessel did not sign, nor in any way participate in the creation of, the fishing agreement at issue in this matter. For the reasons set forth more fully above, Plaintiff Harper's motion for partial summary judgment [is] GRANTED.

The clerk of the Court is directed to distribute this order to all counsel of record.

DATED this 8th day of March, 2001.

/s/ Marsha J. Pechman
Marsha J. Pechman
United States District
Judge

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOE HARPER, and the class of similarly situated persons, et al., Plaintiffs-Appellees, v. UNITED STATES SEAFOODS LP, et al., Defendants-Appellants.	No. 01-35264 D.C. No. CV-00-01610-MJP ORDER (Filed Mar. 20, 2002)

Before: O'SCANNLAIN, GRABER, and McKEOWN, Circuit Judges.

The panel has unanimously voted to deny the petition for rehearing. The petition for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration.

The petition for rehearing and the petition for rehearing en banc are DENIED.

APPENDIX D

F/T SEAFREEZE ALASKA
FACTORY TRAWLER EMPLOYMENT CONTRACT

UNITED STATES SEAFOODS LP ("Employer") and NAME HARPER JOE SSN 534 90 7378 ("Employee") signing below agree to employment aboard the Factory Trawler SEAFREEZE AL[A]SKA ("vessel") on these terms and conditions:

[/s/ JH] 1. **EMPLOYMENT DUTIES:** Employee agrees to fully perform all duties as directed by vessel master, mate, supervisor or other designated representative of Employer. Employee agrees to cooperate and to be considerate of others and to abide by all Employers rules and duties and common social and organizational standards and courtesies. Any voluntary departure by an Employee from the Employer's "Rules of Conduct" could result in Employee being fined or terminated at the discretion of Employer. The Master is the ultimate authority on the vessel.

[/s/ JH] 2. **TERM OF EMPLOYMENT:** Employment of Employee is AT WILL; Employee and Employer may each terminate Employee's employment at any time, with or without cause. Employment starts the date the Employee arrives at the vessel. The term of this contract shall be indicated on page 4, unless the vessel is at sea on that date, in which case the contract shall automatically continue through a) if the season is ongoing, the offload after the vessel first reaches a port with regularly scheduled daily air service, or b) if the season is over and the vessel is scheduled to return to Seattle, the offload after the vessel returns to Seattle. Employee agrees that remote

villages such as Adak do not qualify as end of contract port.

Upon expiration of this contract, Employee may apply for rehire or a contract extension. Rehire and contract extension will be at the sole discretion of Employer.

[/s/ JH] 3. **COMPENSATION:** Employee's sole compensation ("Compensation") will be the Employee's share of the CREWSHARE POOL. The CREWSHARE POOL will be approximately 29% of the ADJUSTED GROSS STOCK. ADJUSTED GROSS STOCK (AGS) for the trip means all realized proceeds from fishing and on board processing operations during the period, less a) amounts paid to third parties for fish to supplement production, and b) 28% for marketing expenses (like freight, hauling costs, and other miscellaneous costs associated with moving product to market, etc.) and shared operating costs (like fuel, food, observers, packaging, other expendables, etc.). In the event that product has not yet been sold by the time of settlement, realized proceeds will be calculated at the market value of product at time of settlement, as estimated by Employer.

If Employee voluntarily terminates employment, or is terminated for cause, during a trip, Employee's Compensation for that trip will be calculated based upon the amount of product produced on that trip up to the date of termination. All share rate changes are contingent upon completion of this contract. *In the event that Employee voluntarily terminates employment, or is terminated by Employer, his/her share rate will, for all trips, revert to the initial rate listed in this contract. No rate change shall be valid without written authorization from the office.*

[/s/ JH] 4. **PAYMENT OF EARNINGS:** Settlements are made to crew on the basis of each trip. Settlement will be paid to Employee within 30 working days following termination of the trip. Amounts owned by Employee to Employer, such as for non-cash purchases from stores aboard the vessel, advanced transportation, and deductions for violations as provided in the work rules & duties, or for damage or loss caused by Employee, will be deducted from draws or paychecks. Taxes and deductions required by law will be withheld from paychecks.

[/s/ JH] 5. **TRANSPORTATION:** Employee agrees to pay transportation to and from the vessel. If Employer advances the northbound transportation costs, Employee agrees that any advances will be deducted from settlements. If Employee completes his/her contract, and, *at request of Employer, executes extensions and completes at least 100 consecutive days* Employer agrees to provide transportation back to port of hire, and reimburse transportation costs from the port of hire if applicable. Additional expenses of departing from remote locations may be incurred at the expense of Employee.

If Employee refuses to return to work when requested, or fails to keep in contact with Employer, Employee may forfeit any privileges granted to returning crewmembers and may be subject to terms of a contract with a first time hireling.

[/s/ JH] 6. **PERFORMANCE:** It is essential that all processors be able to pack three quality pans every nine minutes by the end of their first trip. Employer reserves the right to terminate any Employee if he/she cannot or will not perform at this level.

I HAVE READ AND UNDERSTOOD THE ABOVE PARAGRAPH AND ALL IT'S RAMIFICATIONS

100% EFFORT IS REQUIRED
INITIAL: [/s/ JH]

[/s/ JH] 7. **TOWN TIME:** Employee acknowledges that no recreational town time shall be granted. EMPLOYEES leaving the vessel without the permission of the CAPTAIN may be subject to termination.

In the event that Employee voluntarily quits or is fired with cause, his/her share rate will, for all trips, revert to the rate assigned to that Employee at the inception of this contract. All bonuses, including transportation are contingent upon the completion of contract.

[/s/ JH] 8. PHYSICAL CONDITION: EMPLOYEE HAS BEEN ADVISED AND UNDERSTANDS THAT THE WORKING CONDITIONS ON BOARD THE VESSEL ARE DIFFICULT, STRENUOUS, AND SOMETIMES HAZARDOUS, AND WORKING HOURS ARE LONG, AND HAS CONSIDERED THESE FACTORS BEFORE MAKING A DECISION TO ACCEPT THIS EMPLOYMENT. EMPLOYEE HAS BEEN INFORMED WITH RESPECT TO THE ESSENTIAL FUNCTIONS OF HIS OR HER JOB AND HAS HAD THE OPPORTUNITY TO ASK QUESTIONS REGARDING SUCH FUNCTIONS.

Employee warrants that he/she is physically and mentally able to perform all contracted duties without accommodation other than those previously requested of and approved in writing by Employer. Employee further warrants that he/she has no other ailment or condition that may in any way impede, or be made worse by, any duty

or environment. Employee represents and warrants that all medical information provided is complete, true and correct. Employee acknowledges that any medical information requested from or provided by Employee is relied upon by Employer. Employee agrees that failing to provide complete and truthful medical information may result in termination and forfeiture of employee's rights to seamen's benefits including maintenance, cure and unearned wages.

[/s/ JH] 9. **SMOKING:** Due to the extreme danger of fire on board ship, smoking is allowed in designated areas only. Any Employee smoking when or where prohibited may be fired or fined immediately.

[/s/ JH] 10. **REPORTING OF INCIDENTS:** If Employee becomes injured or ill, Employee shall immediately fill out Employer's and state's medical and accident report forms and deliver them to Employee's supervisor on board. Federal law requires all incidents be reported within 7 days of occurrence. Other than in the event of an emergency, Employee agrees that in the event that he/she leaves the vessel due to medical reasons, and still requires medical attention, Employee agrees to contact a medical practitioner assigned by Employer prior to contacting other medical professionals.

[/s/ JH] 11. **SEXUAL OR OTHER HARASSMENT:** UNITED STATES SEAFOODS LP prohibits sexual harassment or harassment of any kind. Employee agrees to abide by sexual harassment policies posted on vessel. If Employee experiences or witnesses any form of sexual

harassment, or other harassment, he/she must immediately report incident to the vessel's master or mate or other company representative.

[/s/ JH] 12. **ZERO TOLERANCE DRUG, ALCOHOL AND CONTRABAND POLICY:** *"SEAFREEZE ALASKA IS A DRUG FREE WORKPLACE!!!* Employee understands that no alcohol, and no illegal drugs, controlled substances or paraphernalia are permitted on this vessel. Employee promises he will not bring any trace of illegal substance or any alcoholic beverage, consume any alcoholic beverage, or be intoxicated, aboard the vessel. Employee promises he shall use no illegal drugs during his employment. Employee promises he will bring no weapons aboard the vessel.

U.S. customs may search persons, personal gear and vessel in port or on high seas. Employer shall also have the right to inspect Employee's quarters and personal effects for the presence of alcohol, illegal drugs, controlled substances, weapons, or other contraband.

Employee agrees to voluntarily submit to any drug tests requested by Employer or required by law. Any refusal to submit to a requested test is cause for immediate termination.

If any illegal drugs or controlled substances are found in Employee's body, possession, or quarters, he shall be immediately terminated and shall be liable to indemnify and hold harmless Employer, vessel owner, and fellow crew members for all costs, fines, penalties, and losses suffered by reason of the presence of illegal drugs or controlled substances aboard the vessel. Employment may be terminated immediately for cause for any other

violation, no matter how small, or any positive drug test report.

[/s/ JH] 13. **MAINTENANCE:** Employee agrees that any maintenance due shall be paid at the rate of twenty dollars ($20.00) per day.

[/s/ JH] 14. **COMPLIANCE WITH THE LAW:** Employee shall comply with all applicable laws while serving aboard the vessel. Employee shall report any violations of law he observes or knows of to the Employer immediately. Employee shall indemnify and hold Employer and the vessel owner harmless from any lost fishing profits, fine, penalty, or forfeiture imposed or suffered as a result of any violation of law in which Employee knowingly participates or fails to report to Employer. Employer prohibits, and Employee agrees not to retain any seafood prohibited species onboard the vessel, nor retain any seafood products for personal retention. Employee will be terminated if arrested.

[/s/ JH] 15. **OTHER LIABILITY:** Employee shall also be liable to and indemnify Employer for any damages, including damages to the vessel or crew, caused by Employee's intentional wrongful act, or negligent act, error or omission.

[/s/ JH] 16. **ROOM & BOARD:** Employer will provide room and board at no charge for each day the Employee is employed and is accommodated aboard the vessel. If Employee voluntarily refuses to work, or terminates employment, or is terminated for any cause during the trip, then Employee will be charged and will pay $50.00 for room, board and liquidated damages for each

day Employee refuses to work and/or for each day on board after Employee's employment is terminated.

[/s/ JH] 17. **ACCOMMODATIONS:** Each Employee will be assigned a bunk and limited personal storage area. Due to limited storage facilities, Employee shall not bring jewelry, items of personal value or more than $50.00 in cash. The safekeeping of all personal belongings is the responsibility of the Employee, and Employer shall not be responsible for loss of personal belongings under any circumstances.

[/s/ JH] 18. **PERSONAL & WORK GEAR:** Employee shall provide his own sleeping bag, warm, durable work and personal clothes, and toiletries, rain-gear, rain boots, and personal effects sufficient to last the whole contract period. Limited replacement items may be available for purchase on board the vessel. Employer will provide hearing protectors and other items (if any) required by health and safety laws at no charge if they are returned undamaged.

Employee will remove all personal belongings when leaving the vessel for any reason. Items left by the Employee after their departure will be disposed of at the discretion of the Employer. If Employee leaves due to a medical emergency, their belongings will be returned to the Employer's Seattle office. Employee is responsible for claiming items promptly.

[/s/ JH] 19. **MEDICAL/PERSONAL SUPPLIES:** The vessel carries only a very basic set of emergency medical supplies. There will be no doctor or nurse aboard. Employee must take care of any medical or

dental condition which requires professional attention before boarding. Employee shall bring a complete supply of any medical supplies he may need, including extra glasses or contact lenses. If Employee is unable to perform duties because of forgotten necessary medical supplies, Employer will not be responsible for Employee's wages until Employee returns to work.

[/s/ JH] 20. **MAILING ADDRESS AND COMMUNICATIONS:** The location of the vessel will change during the season so it is not possible to have one mailing address in Alaska for the season. All letters may be mailed to:

Employee's Name
C/O F/T SEAFR[E]EZE ALASKA
P.O. Box 920885
Dutch Harbor, AK 99692

Letters (no packages) will be forwarded to the vessel whenever possible (approximately once a month). Employee shall take care of all urgent correspondence before boarding. On-board voice communication equipment for personal matters is available on a collect or credit card call basis, at approximately $10.00 per minute.

[/s/ JH] 21. **SAFETY:** Employee promises to view all safety videos and read the Vessel Safety Manual and familiarize himself with its contents within 48 hours of boarding the vessel. Employee shall at all times abide by all safety instructions or procedures. Employee shall use all safety equipment provided. Employee shall request any safety equipment required for his job if it is not provided, and report any unsafe conditions to Employer.

Failure to participate in safety drills or failure to abide by safety procedures may result in fines or termination.

[/s/ JH] 22. **DISPUTE RESOLUTION:** All disputes arising from the contract or Employee's employment shall be arbitrated in Seattle, Washington subject to the Mandatory Arbitration Rules of King County Superior Court.

[/s/ JH] 23. **CHOICE OF LAW, VENUE, JURISDICTION AND IN REM CLAIMS:** This agreement is executed at Seattle, Washington and shall be solely governed, construed, interpreted and enforced pursuant to the federal and maritime laws of the United States. Employer and Employee submit to the jurisdiction of the Courts of King County and the United States at Seattle, Washington. The sole venue for lawsuits concerning this contract or arising out [of] employment, including personal injury claims and in rem claims, is Seattle, Washington.

Employee agrees that prior to causing the arrest of or detention of the vessel to enforce any in rem claim, Employee shall either a) agree with Employer to accept reasonable substitute security, or b) obtain a pre-arrest hearing to set a bond. If Employee fails to do so, Employee automatically waives all in rem claims and Employee shall be liable to and indemnify Employer and vessel owner for all direct and consequential damages suffered by employer and vessel owner, master, and crew by reason of the rightful or wrongful arrest or detention of the vessel. Nothing in this paragraph shall alter any time bar or statute of limitations.

[/s/ JH] 24. **SEVERABLE CLAUSES:** If any provision of this contract is found to be invalid, void, or

illegal, it shall not affect or invalidate any other provision of this contract.

[/s/ JH] 25. **TIME BAR/ATTORNEY'S FEES:** Employee agrees that he/she file any legal actions that he/she might have in connection with performance of this contract within six (6) months after the termination of this contract. Employee hereby waives any claims not filed within that period. Both parties hereby waive any and all rights to attorney's fees incurred in disputes arising in connection with this contract.

[/s/ JH] 26. **ENTIRE AGREEMENT:** This employment contract, Employee's employment application, health questionnaire, and employment eligibility verification (form 1-9), received by Employee constitute the entire agreement between Employer and Employee, supersede all prior oral or written statements and representations, and may not be modified except if signed by both Employee and Employer. No representative of Employer has made any oral or written representation inconsistent with these provisions.

Port of Hire: SEATTLE WA Vessel: F/T SEA-FREEZE ALASKA

Position: PROCESSOR Contract term 40 DAYS

Employee's Share of Adjusted Gross Stock .6 SHARES

Bonus upon completion of contract: .4 SHARES

GUARANTEED GROSS EARNINGS: If Employee satisfactorily completes this contract, Employer guarantees

that Employee will earn gross wages for the entire contract term which average a pro rate rate of:

$1,000 Per 30 days

I have read and understand this contract and have received a copy of this contract and a current copy of the vessel rules of conduct.

I agree to comply with the terms and conditions of employment as itemized in this agreement and all rules of conduct.

I ACCEPT THIS OFFER OF EMPLOYMENT:

EMPLOYEE NAME JOE HARPER

EMPLOYEE SOCIAL SECURITY NUMBER
534 90 7378

EMPLOYEE SIGNATURE /s/ Joe Harper

DATE 1-11-00

CONTRACT TERMS AGREED TO:

BY: /s/ Tracy Veness PERSONNEL DEPARTMENT

DATE CONTRACT SIGNED 1/12/00

EMPLOYER: UNITED STATES SEAFOODS LP

WHERE DO YOU WANT YOUR CHECKS TO GO?

NO SETTLEMENT CHECKS OR ADVANCES WILL BE SENT TO THE VESSEL WITHOUT WRITTEN APPROVAL OF COMPANY PRESIDENT

14222 235th St SE

SNOHOMISH WA 98296